



IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1976

NO. 77-14

BASCOM BOGLE,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

Petition For Writ Of Certiorari
To The United States Court Of
Appeals For The Ninth Circuit,
Judgment Affirming Judgment Of
The United States District Court
For The Central District Of
California

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The Petitioner Bascom Bogle respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on March 15, 1977. The order

denying the Petition for Rehearing in the United States Court of Appeals for the Ninth Circuit was filed on May 27, 1977.

OPINION BELOW

The opinion of the Court of Appeals, an unreported memorandum opinion, appears as Appendix A hereto. A copy of the Order denying the Petition for Rehearing in the United States Court of Appeals for the Ninth Circuit is attached hereto as Appendix B. The District Court's opinion was not reported.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on March 15, 1977. A timely Petition for Rehearing and Suggestion for Rehearing En Banc was denied on May 27, 1977. This Petition for Certiorari has been filed simultaneously with an Application for Extension of Time for Filing Petition for Certiorari. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether warrantless border searches are authorized solely by statute, or are judicially created "exceptions" to the general warrant requirement.

2. Whether the instant search exceeded the permissible statutory authorization.

3. Whether the statute authorizing this search is overly broad.

4. Whether § 482 or § 1496 of Title 19, United States Code, governs border searches.

STATUTORY PROVISIONS INVOLVED

Title 19, United States Code, § 482, provides as follows:

"Any of the officers or persons authorized to board or search vessels may stop, search, and examine, as well without as within their respective districts, any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which

is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if any such officer or other persons so authorized shall find any merchandise on or about any such vehicle, beast, or person, or in any such trunk or envelope, which he shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, whether by the person in possession or charge, or by, in, or upon such vehicle, beast, or otherwise, he shall seize and secure the same for trial."

Title 19, United States Code, § 1496, provides as follows:

"The collector may cause an examination to be made of the baggage of any person arriving in the United States in order to ascertain what articles are contained therein and whether subject to duty, free of duty, or prohibited notwithstanding a declaration and entry therefor has been made."

STATEMENT OF THE CASE

This case arises from a search for contraband conducted by a customs inspector at the Los Angeles International Airport on July 21, 1976.

Inspector Varesi was assigned that day to examine baggage of passengers deplaning Braniff Airlines Flight 922, arriving directly from Lima, Peru. Varesi testified that he decided, prior to the plane's arrival, to search all luggage on board for contraband. The Petitioner was a passenger on that flight.

As he passed through customs, Inspector Varesi searched a suitcase belonging to the Petitioner. Varesi cut through the bottom of the suitcase and discovered approximately 1,700 grams of cocaine. The Petitioner was tried and convicted for importation of cocaine (21 U.S.C. § 952(a), § 960(a)(1)) and possession with intent to distribute cocaine (21 U.S.C. § 841(a)(1)).

REASONS FOR GRANTING THE WRIT

Border Searches Are Governed By Title 19, United States Code, § 482.

At trial and before the Ninth Circuit Court of Appeals, the Petitioner urged the Court to adopt the ruling that warrantless border searches are governed by Title 19, United States Code, § 482. No reported case has ever held that such searches fall within any well-recognized "exception" to the requirement that searches must be conducted pursuant to warrant. In Coolidge v. New Hampshire, 403 U.S. 443 (1971), this Court articulated the exceptions and justifications for allowing searches without a warrant.

No mention was made of "border searches". The holding of the Ninth Circuit in this case now expands on these "exceptions" and includes border searches.

The Petitioner urged the Circuit Court that the search had to be governed by Title 19, United States Code, § 482. Every reported case discussing border searches in the Courts of Appeal have used this statute as justification for the search. Yet the Ninth Circuit in its opinion intimates that no statutory authorization is required.

THE SEARCH IN THIS CASE WAS CONDUCTED IN CONTRAVENTION OF STATUTORY AUTHORIZATION

The Petitioner further argued at trial and in the Circuit Court that Title 19, United States Code, § 482, only authorized searches upon a demonstrable showing of "reasonable cause" to quote the statute. Here, the customs Inspector stated that he decided to search all luggage in advance of its arrival. No attempt was made to justify his decision, nor was any evidence admitted in the record establishing what "reasonable cause" existed at

the time this decision was made.

TITLE 19, UNITED STATES CODE,
§ 482 IS OVERLY BROAD AND AUTH-
ORIZES "GENERAL WARRANTS"

The Petitioner argued at trial and before the Circuit Court that § 482 was overly broad in that it authorized searches of luggage "wherever found", again to quote the statute. Thus, this ancient statute (1866) suffers from the same infirmity as the statute this Court ruled infirm in a similar situation in Almedia-Sanchez v. United States, 413 U.S. 266 (1973).

TITLE 19, UNITED STATES CODE,
§ 1496 DOES NOT AUTHORIZE
SEARCHES FOR CONTRABAND

The Circuit Court stated that this search was authorized by § 1496 of Title 19, United States Code. No other Court has ever applied this section to border searches. The Petitioner argued that this section dealt with examination for dutiable items, not searches for contraband. The Circuit Court's ruling is unsupported by any reported decision,

and is clearly an immense extension of statutorily authorized border searches. It is furthermore clearly erroneous, since that statute by its very language does not deal with searches for criminal violations.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

CHESTER L. BROWN

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BROWN & NEWTON
Attorneys at Law

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

Mar 15 1977

Emil E. Melfi, Jr. Clerk
U.S. Court of Appeals

UNITED STATES OF AMERICA,)	
Plaintiff-Appellee,)	No. 76-3388
v.)	
BASCOM BOGLE,)	MEMORANDUM
Defendant-Appellant.)	

APPENDIX A

Appeal from the United States District
Court for the Central District
of California

Before: HUFSTEDLER, GOODWIN, and ANDERSON,
Circuit Judges.

Bogle appeals from his conviction for unlawfully importing 1700 grams of cocaine. He contends that his motion to suppress the cocaine should have been granted because it was the product of an illegal search in violation of his rights secured by the Fourth Amendment. The contraband was found during the course of a search of his suitcase by customs officials when he arrived from Lima, Peru, in Los Angeles.

A-1.

We reject his contentions.

The examination of Bogle's luggage by customs authorities was authorized by 19 U.S.C. §§ 482 and 1496. Bogle claims that the statutes are overbroad in that the statutes authorize search of trunks or suitcases "wherever found." Bogle's suitcase was found at the border pursuant to an ordinary customs search. He is in no position to contend that the application of the statute to him is in any respect overbroad. Of greater moment, however, Bogle does not have any Fourth Amendment expectation of privacy in the contents of his suitcase when he enters the country from abroad and presents himself for customs inspection. "Neither history nor contemporary concepts of dignity suggests to anyone that he will be free from official scrutiny on crossing an international boundary. He must anticipate that he will be detained temporarily at the border. He will be interrogated. His vehicle, if any, and his personal effects will be examined. Such routine detention has never been equated with an arrest, however that term is

defined in other context, and such routine inspections are not deemed unreasonable searches. (E.g., Carroll v. United States (1925) 267 U.S. 132, 154, ...; Boyd v. United States (1886) 116 U.S. 616, 623-624 . . .)" (United States v. Guadalupe-Garza, 421 F.2d 876, 878 (1970)).

This was plainly a border search as that term has been interpreted by the United States Supreme Court in Almeida-Sanchez v. United States, 413 U.S. 266 (1973). Bogle has no expectation of privacy in the extensive search that was conducted of his suitcase that led to the discovery of the contraband. Accordingly, the search that revealed the contraband was not in violation of his Fourth Amendment right to be free from unreasonable searches and seizures and denial of the motion to suppress based upon the Fourth Amendment was correct.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
May 27, 1977
Emil E. Melfi, Jr.
Clerk, U.S. Court of Appeals

UNITED STATES OF AMERICA,)	
Plaintiff-Appellee,)	
v.)	No. 76-3388
)	DC Cr 76-967
BASCOM BOGLE,)	IH
Defendant-Appellant.)	ORDER

APPENDIX B

BEFORE: HUFSTEDLER, GOODWIN, and ANDERSON,
Circuit Judges.

The panel as constituted in the above case has voted to deny the petition for rehearing and to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for an en banc hearing, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

A TRUE COPY ATTEST 5/27/77 Emil E. Melfi,
Jr. Clerk of Court - by: Pat Naeushawe,
Deputy Clerk

B-1.